

# DOCKET SECTION

BEFORE THE  
POSTAL RATE COMMISSION  
WASHINGTON, DC 20268-0001

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POSTAL RATE COMMISSION  
OFFICE OF THE SECRETARY

Postal Rate And Fee Changes, 1997

Docket No. R97-1

**MOTION OF THE ALLIANCE OF NONPROFIT MAILERS  
TO COMPEL ANSWERS TO INTERROGATORIES  
AND FOR  
PERMISSION TO FILE SUPPLEMENTAL TESTIMONY  
WITHIN TWO WEEKS OF RECEIPT  
OF ANSWERS FROM THE USPS  
(ANM/USPS-20-23 and 25-26)  
(December 22, 1997)**

The Alliance of Nonprofit Mailers ("ANM") hereby moves to compel the Postal Service to answer five interrogatories, ANM/USPS-20-23 and 25-26, served by ANM on December 9, 1997. ANM also requests leave to submit additional supplemental testimony within two weeks of receipt of the Postal Service's answers to the interrogatories.

ANM/USPS-20 seeks information on the volume of Nonprofit Standard Mail (A) (formerly nonprofit third-class bulk mail), that was entered at Standard Mail (A) rates (formerly third-class bulk rates) as a result of Postal Service determinations that the mail did not qualify for the third-class bulk nonprofit or Nonprofit Standard Mail (A) rates. The request covers three time periods: (1) from May 5, 1995 (the issuance date of regulations implementing the eligibility restrictions enacted by the General Governmental Appropriations Act of 1991, Pub. L. No. 101-509, and the Revenue Foregone Reform Act, Pub. L. No. 103-123,

and codified at 39 U.S.C. §§ 3626(j)) through the end of FY95; (2) Fiscal Year 1996; and (3) the beginning of Fiscal Year 1997 through March 8, 1997, the ending date of the Nonprofit Mail Characteristics Study submitted in this case as LR-H-195.

ANM/USPS-21 asks the Postal Service to indicate how many pieces and pounds of mail originally entered as Nonprofit Standard Mail (A) or nonprofit third-class bulk mail later generated additional postage payments after the Postal Service found the mail ineligible for the nonprofit rates and required the mailer to pay bulk third-class or Standard Mail (A) rates. The request covers the same three time periods as in ANM/USPS-20.

ANM/USPS-22 asks the postal Service to provide all rules, regulations, operations manuals, handbooks and similar documents in effect from May 5, 1995 through March 8, 1997 related to the accounting treatment (in RPW data and elsewhere) of mail bearing Nonprofit Standard Mail (A) indicia that (1) was entered at Standard Mail (A) rates or (2) was later assessed additional postage on the grounds that the mail was ineligible for nonprofit rates.

ANM/USPS-23 asks the Postal Service what instructions were given to IOCS tally takers concerning the classification of mail that bore Nonprofit Standard Mail (A) indicia but was entered at another rate.

ANM/USPS-25 asks about (1) revisions made to Form 3602 mailing statements when Standard Mail (A) entered at nonprofit rates was later assessed additional postage under another rate class or subclass, and (2) the instructions, rules etc. governing revisions of Form 3602s.

ANM/USPS-26 asks similar questions about mailings that were not accepted by the Postal Service for mailing at nonprofit rates.

The complete text of each of questions to which the Postal Service has objected is attached to this Motion as Exhibit 1.

ANM drafted and served these questions upon unearthing several factors that may have been responsible for the anomalous and unprecedented deviation between the costs attributable to Nonprofit Standard Mail (A) and commercial Standard (A) Mail, especially the “regular” category of each subclass. Specifically, ANM now has reason to believe that in FY96 many pieces of mail entered by qualified nonprofit mailers at Standard Mail (A) (“commercial”) rates were erroneously tallied in the IOCS as Nonprofit Standard Mail (A) because they bore nonprofit markings. This error would have inflated the overall costs attributed by the Postal Service to Nonprofit Standard Mail (A).

It is likely that this mail was properly recorded in the RPW system as Standard Mail (A), for it would have been entered with a Form 3602-R or 3602-PR rather than a Form 3602-N or 3602-PN. The resulting mismatch between the IOCS data and the RPW data almost certainly has overstated the unit attributable cost of Nonprofit Standard Mail (A).

The ANM is aware of several factors likely to have caused nonprofit mailers to enter an unusually large share of their Standard Mail (A) at commercial rates during Fiscal Year 1996. That year marked the Postal Service’s first significant effort to enforce the eligibility restrictions enacted by the General

Governmental Appropriations Act of 1991, Pub L. No. 101-509, and the Revenue Foregone Reform Act, Pub. L. No. 103-123, and codified at 39 U.S.C. §§ 3626(j).

As a result of these efforts, substantial volumes of mail originally entered as nonprofit mail eventually paid commercial rates—i.e., the rates applicable to Standard Mail (A). This mail would have been incorrectly tallied as Nonprofit Standard Mail (A) (or, before reclassification bulk nonprofit mail) for IOCS purposes since there would be no way for an IOCS tally clerk to know that this mail would eventually pay the rates applicable to commercial Standard Mail (A).

The ANM also believes that an already confused situation was aggravated in FY96 by implementation of requirements resulting from the reclassification of third-class bulk mail as Standard Mail (A). As this Commission knows, nonprofit mail was excluded from the initial reclassification case MC95-1, over the objection of the ANM, and made the subject of a separate case, MC96-2, filed during FY96. Although reclassification requirements did not officially apply to nonprofit mail until the end of FY 96, there is evidence that at least some nonprofit mailers were directed to comply with the new requirements for Standard (A) Mail *before* resolution of the separate nonprofit reclassification case.

Moreover, other nonprofit mailers apparently were allowed to enter mail for some time after the beginning of FY97 that did not meet all of the post-reclassification requirements. ANM is trying to do is determine the extent to which these factors explain the puzzling, and otherwise unexplained, deviation between the costs attributed to Nonprofit Standard (A) Mail Regular in FY96 versus commercial Standard Mail (A) Regular mail. ANM is also trying to ascertain how much these factors influenced the Nonprofit Mail Characteristics Study done from late January 1997 through early March 1997.

These anomalies, to the extent that they have in fact occurred, raise obvious questions about the integrity and reliability of the data systems for volumes and costs used by the Postal Service to prepare its request. One would have assumed that the Postal Service would want to do everything in its power to verify the integrity of the data on which it is asking the Commission to rely. The Postal Service, however, while professing ignorance about the cause of the disproportionate increase in the costs attributed to nonprofit mail, has met ANM's discovery requests with a barrage of objections.

The Postal Service first objects that ANM's discovery requests are untimely. Specifically, the Postal Service asserts that "the data systems and their output, which are the focus of these inquiries, were the subject of extensive testimony by [the] Postal Service in its direct case. Discovery regarding this type of information was required to be completed by September 17." The Postal Service also notes that, although discovery regarding the design of the statistical sample process was reopened after September 17, ANM's questions have nothing to do with sample design. The Postal Service also asserts that discovery on the supplemental testimony that dealt with sample design was required in any event to be completed by November 14.

These objections ignore Rule 2. E. of the Commission's Special Rules of Practice, which provides, *inter alia*:

Generally, discovery against a participant is scheduled to end prior to the receipt into evidence of that participant's direct case. *An exception to this procedure shall operate when the participant needs to obtain information (such as operating procedures or data) available only from the postal Service. Discovery requests*

*of this nature are permissible up to 20 days prior to the filing date for final rebuttal testimony. (Emphasis added).*

ANM's interrogatories seek information related to operating procedure and data that are obviously available only from the Postal Service. Thus, they fall squarely within the exception to the general rule noted above.

Moreover, the Postal Service's position is flatly inconsistent with the February 17, 1998 cutoff date set by the Commission for completion of discovery against the Postal Service. Under the Postal Service's theory, the closing date for discovery is not February 17; but an earlier date that already has come and gone.

The Postal Service also objects to ANM interrogatories 20, 21, 25 and 26 on grounds of undue significant burden. In an effort to reduce that burden, however, ANM offered on December 15 to take part in a technical conference with the Postal Service to explore possible alternatives to the interrogatories. ANM also offered to limit the questions to information available at Postal Service headquarters in Washington, D.C. (ANM did not know when filing its interrogatories – and still does not know – exactly what sort of data related to its interrogatories the Postal Service possesses and can produce without surveying “every point at which business mail may be entered.”) The ANM had also hoped that it could determine at a technical conference the degree to which changes in the type of data described in its discovery requests are standardized within the postal system.

The Postal Service after considering the ANM's suggestion for several days advised counsel for the ANM on December 18, that it could not identify any single person or even small group of people who could respond to the ANM's

questions at a technical conference and had decided instead to file the objection which have given rise to this motion.

While responding to the interrogatories at issue undoubtedly will take time, that burden is not undue for the information is critical, and ANM simply has no other way to obtain it. Moreover, the Postal Service's burden in answering the questions is far less than the burden that nonprofit mailers would bear if forced pay the enormous rate increases that the Postal Service would impose on them in reliance on data that are, and at best, very questionable.

Accordingly, ANM respectfully requests that the Postal Service be compelled to provide full and complete answers to Interrogatories ANM/USPS-20-23 and 25-26. ANM also requests leave to file supplemental testimony within two weeks of receipt of the Postal Service's response to the interrogatories. Even if the Postal Service immediately answered the questions now, the answers are unlikely to arrive before the December 30 deadline for filing intervenors' cases-in-chief.

Without an opportunity to submit additional testimony in these issues, ANM believes that nonprofit mails may be forced to pay unjustifiably higher rates than they should for an indefinite time into the future. This expense is one that will directly reduce that ability of these organizations to perform the very program and services that are the basis for the reduced rates that the Congress mandated in the Revenue Foregone Reform Act of 1993, Pub. L. No. 103-123. The loss of

these service and programs will adversely effect not only the organizations, but the public good which they serve.

Respectfully submitted,

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December 22, 1997

#### **CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document on all participants of record in this proceeding in accordance with section 12 of the Rules of Practice.

*Joel T. Thomas*

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December 22, 1997